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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re C. C., et al., Persons Coming Under
the Juvenile Court Law.

B205260

(Los Angeles County
Super. Ct. No. CK58216)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

C. Q.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Elizabeth Kim, Referee. Affirmed.

John L. Dodd & Associates and John L. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James Owens, Assistant County Counsel, and Judith A. Luby, Principal Deputy County Counsel for Plaintiff and Respondent.

Mother C. Q. appeals from an order terminating her parental rights. She argues the juvenile court failed to adequately examine the adoptability of her three children. Mother also argues the court's finding, that the beneficial relationship exception to termination of parental rights codified in Welfare and Institutions Code section 366.26, subdivision (c)(1)(B)(i)¹ does not apply, is not supported by substantial evidence. We find no error in the court's determination that the children are adoptable. Substantial evidence supports the finding that the beneficial relationship exception does not apply.

FACTUAL AND PROCEDURAL SUMMARY

This case arises after we granted mother's petition for writ of mandate and returned the matter to the juvenile court. We take portions of our factual summary from our prior unpublished decision, [*C. Q.*] v. *Superior Court* (Mar. 27, 2006, B187893).

C. Q. is the mother of C. C., A. C., and G. R. The fathers are not parties to this appeal. Beginning in 2000, the Department of Children and Family Services (DCFS) received five referrals on the family alleging physical abuse, drug use, domestic violence, failure to provide medical care, and caretaker absence. C. C., the oldest child, stated that she had been beaten by mother, that she saw her father abuse mother, and that mother used drugs with her friends. Mother left the children with their maternal grandmother in December 2004 and disappeared. No one knew her whereabouts until February 2005, when she was discovered to be in a hospital psychiatric unit because of drug use. After mother was released from the hospital, she was arrested and incarcerated for battery on a police officer. She remained incarcerated in either Los Angeles or Corona during the proceedings before her writ petition was granted.

DCFS filed a section 300 petition and detained the children in March 2005. The juvenile court placed the children with their maternal grandmother. In April, DCFS reported that the grandmother failed to provide adequate supervision and medical care. The court then placed the children in foster care. The court sustained the petition on

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Statutory references are to the Welfare and Institutions Code.

April 27, 2005. Mother was ordered to participate in drug rehabilitation, domestic violence counseling, and parent education. She was told the social worker would arrange phone calls for her with the children at the foster parents' home.

The court found that mother had failed to comply with the reunification plan. It terminated services, and scheduled a selection and implementation hearing under section 366.26. Mother filed a petition for extraordinary writ challenging the adequacy of the services provided. We granted the writ petition, finding that DCFS took no action to assist mother in complying with the ordered services in jail or after she was transferred to prison. We also found DCFS had failed to help mother make the required telephone calls to her children. Based on these conclusions, we held that the juvenile court erred in terminating reunification services and setting the case for a permanency planning hearing.

On remand, the trial court ordered six months of additional services for mother, who remained incarcerated. Mother continued to complain that she was unable to call the children collect from prison. The court ordered DCFS to facilitate the calls, and to check into visitation for the children with mother at the prison. C. C. had been diagnosed with ADHD, enuresis, and mood disorders, and had been prescribed a variety of medications. She had been caught stealing \$70 from her caregiver's purse. A. C. had qualified for special education for speech and language issues.

Mother's release from prison was delayed from October 2006 to November 2006 because she had a new criminal matter while in prison. She was to be released to a substance abuse facility. In late November 2006, DCFS reported that mother had thrown herself on the floor and yelled in a group session while still in prison. She had been released from prison, but had not appeared at the substance abuse center as ordered. She spoke to the DCFS worker on the telephone, but failed to keep an appointment to meet with her.

In a report filed for the January 8, 2007 interim review, the social worker said that she had tried repeatedly (18 times) before successfully contacting mother. Mother failed to appear for a scheduled visit with the children. She was enrolled for random drug and alcohol testing, received referrals for services, and was given transportation tokens to

facilitate services and visits. On December 21, 2006, mother tested positive for opiates and morphine, but attempted to explain the result by claiming she had taken Tylenol with codeine for the flu, although she did not know the name of the doctor who prescribed that medication.

Mother's prison counselor testified at the January 8, 2007 hearing that mother never got far in her program because she fought and argued with other prisoners. She had to be removed from the group shortly before her release from prison. Counsel for the children recommended termination of reunification services. The juvenile court terminated services and set a permanent placement hearing. The court granted a request by DCFS for a 120-day continuance of the permanent placement hearing to allow more time to find an adoptive placement for the children. Additional continuances were granted to allow DCFS time to locate an adoptive home.

On July 31, 2007, prospective adoptive father J. S. and prospective adoptive mother R. S. were identified in Virginia. They had an approved adoption home study. The prospective adoptive father is a law enforcement officer, and the prospective adoptive mother is a pre-kindergarten special education teacher. She has a master's degree in English and a dual master's degree in reading and special education. J. S. has two adult children from a previous marriage, and the prospective adoptive parents have two adopted children together. Because of R. S.'s work with special needs children, they were aware of the great need for adoptive parents. DCFS concluded that the prospective adoptive parents "are very capable of meeting the children's needs. They have the means to provide the children with a safe and stable home, while meeting their basic needs. J. S. and R. S. are aware of the children's needs and are eager to meet them."

A last-minute information for the court filed by the DCFS reported that the prospective adoptive parents, had had three monitored visits with the children in early September 2007. The DCFS adoption worker monitored a one-hour visit and a five-hour visit the next day. The visits went very well. The adoptive parents were very appropriate, assumed the parental role by providing guidance, boundaries, basic care, and appropriate interactions with the children. They actively engaged the children in a

number of settings and truly enjoyed the visits. The foster parent monitored a two-hour visit the following day, which was reported have gone very well. DCFS recommended adoption as the permanent plan for the children.

In an interim review report prepared for a hearing on December 6, 2007, DCFS reported the children could not be placed with the prospective adoptive parents until parental rights had been terminated and the interstate compact for placement of children (ICPC) was approved. The ICPC had been initiated and Virginia had accepted it. The prospective adoptive parents had maintained weekly telephone contact with the children and had written several letters. They remained eager to have the children placed in their home for adoption. They had purchased furniture for the children and prepared their bedrooms. DCFS reported: "They are aware of the children's needs and they are willing to provide them with the love, stability, and care that they need to transition into their home."

The children were experiencing anxiety as a result of the delays in their placement. They also had experienced recent changes in residences and schools, and had inconsistent visits with mother. Visits with mother were described as chaotic because of mother's inability to provide direction or guidance as the children acted out. DCFS said: "[I]t is imperative that the court understand that in order for the Department to pursue adoption and placement of the children Termination of Parental Rights must be ordered." A letter was attached from the prospective adoptive parents expressing their commitment to adopting the children.

The children went on a holiday visit to the prospective adoptive parents during the Christmas holiday in 2007. R. S. told DCFS the children were doing very well, better than expected and were transitioning well. They were responsive to direction and re-direction. A. C. and G. R. had tantrums, but were able to do a time out, apologize, and move on. C. C. told the worker she did not want to make mother unhappy, and was happy in school. She expressed excitement about going to Virginia to visit the prospective adoptive parents. C. C. and A. C. were confused about how to address the prospective adoptive parents.

At a hearing on January 22, 2008, mother testified and objected to placing the children with the prospective adoptive parents because they had only a short relationship with J. S and R. S. and because the foster parents were now willing to become legal guardians. Mother felt that C. C. was trying to block any emotional attachment with her. Sarah Long, the adoptions social worker also testified. She said that C. C. “at times feels conflicted because obviously she’s bonded to her biological mother, but at the same time she has developed a relationship with the new [prospective] adoptive family.” Ms. Long felt very confident that the prospective adoptive parents were committed to adopting the children, based on her telephone conversations with them and their constant contact with her about the children.

Ms. Long described the children’s behavioral problems: “[C. C.] has some behavior problems. However, they’ve been more manageable. She has been exhibiting behavior problems such as ADHD, but she has counseling services. [A. C.] has behavior problems, but they have become more mild. Him and his brother [G. R.] seem to have a lot of conflict. They receive counseling to work on their relationship and their fighting and aggressive behaviors. Recently [G. R. has] become more aggressive and had tantrums and is needing a lot of redirection and attention; however, [C. C. and A. C.] are on medication. [G. R.] doesn’t take any medication.” A counselor for C. C. had been identified in Virginia. The prospective adoptive parents had been made aware of the children’s behavioral issues, and expressed their intention to continue therapy for the children and to monitor their medications. The behavioral problems had not deterred the prospective parents. They remained eager to know when the children would be placed with them.

Counsel for the children told the court he had worked with the children for over two years, and was initially skeptical about the prospective adoptive parents based on his familiarity with the children’s issues. He said he had done his independent investigation pursuant to section 317, subdivision (e) and “I feel very satisfied that this adoption is going to be a success—a great success.” As counsel for C. C., he represented that he spoke with her after the visit with the prospective adoptive parents over the Christmas

holiday “and I can represent to the court that I’m definitely in favor of termination of parental rights and adoption.” He referenced the evidence of the troubled visits between mother and the children. Counsel for the children asked the court to terminate parental rights.

Counsel for mother argued that the behavioral problems of the children militated toward a slower determination of placement. He questioned whether the children would become legal orphans if the adoption is not successful. Counsel suggested that as children become familiar in a new environment, their behavioral problems worsen. He argued there was no need to remove the children from the only caretaker they had known. Counsel for mother also expressed concern that the caregiver’s wishes had not been adequately assessed. When the court indicated there was evidence the children are adoptable, counsel for mother objected to a finding of adoptability. Counsel for DCFS pointed out that in May 2007, the caregiver said she would only agree to long term foster care. She argued that mother had failed to show that it would be a detriment to terminate parental rights.

The court found by clear and convincing evidence that the children are adoptable and that it would be detrimental to return them to their parents. Mother’s parental rights as to each of the three children were terminated. Custody of the children was transferred to the DCFS for adoptive planning and placement. Mother filed this timely appeal.

DISCUSSION

I

Mother first challenges the court’s finding that the children were adoptable despite their various behavioral issues.

“The adoptability issue at a section 366.26 hearing focuses on the dependent child, e.g., whether his or her age, physical condition, and emotional state make it difficult to find a person willing to adopt. (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649 (*Sarah M.*)). It is not necessary that the child already be in a potential adoptive home or that there be a proposed adoptive parent ‘waiting in the wings.’ (*In re Jennilee T.* (1992) 3

Cal.App.4th 212, 223, fn. 11.) [¶] Conversely, the existence of a prospective adoptive parent, who has expressed interest in adopting a dependent child, constitutes evidence that the child's age, physical condition, mental state, and other relevant factors are not likely to dissuade individuals from adopting the child. In other words, a prospective adoptive parent's willingness to adopt generally indicates the child is likely to be adopted within a reasonable time either by the prospective adoptive parent or by some other family. (*Sarah M.*, *supra*, 22 Cal.App.4th at pp. 1649-1650.)” (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1312.)

There was substantial evidence to support the court's determination the children are likely to be adopted. While they have behavioral problems, they were in therapy and the two eldest were receiving appropriate medications. All were steadily improving in small increments. The prospective adoptive parents had successfully dealt with these issues during the two-week visit in December 2007. The prospective adoptive parents were committed to adopting and had the ability to address the children's special needs. They had maintained contact with the children and DCFS between visits.

Mother ignores the evidence of the children's progress, citing early reports of their developmental and behavioral problems. She also complains that the visits between the prospective adoptive parents and the children “can hardly be characterized as typical or representative of ordinary family life, however entertaining or exciting it may have been.”

Mother claims this case is analogous to *In re Asia L.* (2003) 107 Cal.App.4th 498 (*Asia L.*), in which the Court of Appeal reversed an order terminating parental rights for absence of clear and convincing evidence of a likelihood the children would be adopted within a reasonable time. The case is not analogous. A significant factor in *Asia L.* was the absence of evidence of approved families willing to adopt children with the developmental problems faced by the children. The foster parents had indicated a willingness to explore adoption at a later date, but had concluded that it was too soon to make such a permanent decision. (*Asia L.*, *supra*, 107 Cal.App.4th at pp. 511-512.) In contrast, J. S. and R. S. are approved adoptive parents with the training and experience to

deal with the children's special needs. They are committed to adopting the children. The finding that the children are likely to be adopted is supported by substantial evidence.

Mother argues that even if the children were adoptable, the court was required to order further efforts to locate an appropriate adoptive family under section 366.26, subdivisions (b)(3) and (c)(3). Subdivision (b) of section 366.26 sets out the placements from which the court may choose upon termination of parental rights. Subdivision (b)(3) states: "On making a finding under paragraph (3) of subdivision (c), [the court may] identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days." Subdivision (c) sets out the procedure for the court to employ in choosing the placement. Subsection (3) of that subdivision provides in pertinent part: "If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption *but is difficult to place for adoption and there is no identified or available prospective adoptive parent*, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child, within the state or out of the state, within a period not to exceed 180 days." (Italics added.)

As DCFS points out, subdivision (c)(3) does not apply here because approved adoptive parents have been identified for the children. Mother argues that the designation of J. S. and R. S. as prospective adoptive parents "was supported by not much more than high hopes and wishful thinking." We disagree. J. S. and R. S. were fully aware of the children's special needs and had a successful two-week visit with them. They remained ready and committed to the adoption. Section 366.26, subdivisions (b)(3) and (c)(3) did not apply under these circumstances.

Alternatively, mother suggests the court should have granted a continuance under section 352. As County Counsel pointed out, the section 366.26 hearing had been trailed from May 2007 to January 2008. The children were ages five, three and one when the petition was filed, and were eight, five and three years old when the contested section

366.26 hearing was held. Continuances are discouraged in dependency proceedings. (See *In re Karla C.* (2003) 113 Cal.App.4th 166, 179-180.) The section 366.26 hearing is designed to protect children's "compelling rights . . . to have a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child." (*In re Celine R.* (2003) 31 Cal.4th 45, 52-53, quoting *In re Marilyn H.* (1993) 5 Cal.4th 295, 306.) The children had a right to placement with the prospective adoptive parents who had made a commitment to them. We find no abuse of discretion in denying a continuance under these circumstances.

Mother also argues the court abused its discretion in not investigating her testimony that the foster mother had changed her mind and was now willing to consider legal guardianship. The foster mother had earlier told DCFS that she was not interested in a plan of legal guardianship or adoption. In a report prepared May 7, 2007, DCFS reported that it had "asked the caregiver if she would be interested in Legal Guardianship for the children and she responded that she has a good relationship with the children and loves them dearly, but states that she is in her sixties and she is only willing to have the children in her home with a permanent plan of Long Term Foster Care." There is no indication in the record that the foster mother had informed DCFS after that date that she had changed her mind. Mother concedes that section 366.26, subdivision (c)(1)(B)(iv), an exception to termination of parental rights where removing a child from custody of a foster parent would be detrimental, does not apply here because there are children under the age of six in this sibling group. We find no abuse of the court's discretion in declining to further investigate the wishes of the foster mother.

II

Mother also invokes the beneficial relationship exception to termination of parental rights codified in section 366.26, subdivision (c)(1)(B)(i). She argues that her substantial relationship with the children was worth preserving. Mother contends that the juvenile court's finding that the exception did not apply is not supported by substantial evidence.

“Once the court determines the child is likely to be adopted, the burden shifts to the parent to show that termination of parental rights would be detrimental to the child under one of the exceptions listed in section 366.26, subdivision (c)(1). (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1343-1345; but see § 366.26, subd. (c)(1)(A), eff. Jan. 1, 2008.) Section 366.26, subdivision (c)(1)(B)(i), provides an exception to termination of parental rights when ‘[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.’” (*In re S.B.* (2008) 164 Cal.App.4th 289, 297.)

Mother’s visits with the children were consistently problematic. In December 2006, she brought her boyfriend and maternal grandmother to the visit although this was not allowed. In July 2007, DCFS recommended that mother’s visits be reduced to twice monthly “due to mother’s negative and irresponsible behavior during the visits and the children’s subsequent negative behavior once they return from the visits. The caregiver stated that due to . . . mother’s ongoing lack of ability and failure to redirect the children within their interactions with each other and with mother, the children have been coming home from the visits very moody and noncompliant with the rules at home. [C. C.] has to be told more than usual or as is normal to do things and to comply with instructions. [C. C.] has to be instructed and redirected several times, before complying.” The report continued: “A serious incident regarding mother’s lack of parental responsibility and lack of sound judgment occurred during a recent visit in May, 2007. [C. C.] and the caregiver informed CSW that during a visit with mother, the mother bought [G. R.] and [A. C.] a toy gun. She and the caregiver stated [A. C.] told the caregiver ‘Grandma, I’m going to kill you.’ Mother then laughed.”

In June 2007, the caregiver reported that mother brought a large water gun to a visit with the children at a McDonald’s restaurant. Mother sprayed the children inside the restaurant as they ran around trying to avoid getting wet. G. R. began to cry “because the water hit him where it began to *hurt*.” When mother ran out of water, the manager approached and asked mother to stop. C. C. told the social worker that her mother told the manager she did not care when he said the water on the furniture in the restaurant

might cause others to slip and fall. The social worker concluded: “When [C. C.] informed CSW of mother’s behavior, it appeared that [C. C.] wanted to express her concerns of her mother’s inappropriate behavior.”

When the social worker later discussed this incident with mother, mother replied ““It was only a water gun.”” Mother came to the DCFS office and created “an unpleasant situation.” She was unreasonable and rude, did not want to listen or discuss the problem, and then began to cry. The social worker reported that mother “continues to be unable to interact responsibility [*sic*] with other adults and appears to continue to have great difficulty in following simple rules.” The worker concluded: “The child [C. C.] has suffered confusion by witnessing her mother acting out during visitation. [C. C.] knows that mother’s behavior is ‘wrong’ and has verbalized this. Mother’s acting out is confusing and damaging to the children.”

On this record, mother has failed to meet her burden of showing a continuing relationship will be positive for the children. (See *In re Lorenzo C.*, *supra*, 54 Cal.App.4th 1330, 1345.)

DISPOSITION

The order terminating mother’s parental rights is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.